MALAYSIAN REPORTS

DATUK HAJI HARUN BIN HAJI IDRIS & ORS. v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Wan Suleiman F.J. and Wan Hamzah J.) September 22, 23, 26 to 30, October 3 to 7, 10 to 14 and December 6, 1977]

[Kuala Lumpur — Federal Court Criminal Appeal No. 11 of 1977]

Criminal Law and Procedure — Forgery — Criminal breach of trust — Abetment of criminal breach of trust — Document purporting to be minutes of Investment Committee of Co-operative Society — Document used to secure letters of credit for another company — Property disposed of in violation of direction of law and in violation of legal contract of service — Dishonest intent — Penal Code, ss. 23, 24, 107, 405, 415, 463, 464, 468.

Criminal Law and Procedure — Sentence — Principles applicable — Offences akin or intimately connected with each other — Concurrent sentences.

Co-operative Society — Powers of — Board of Directors delegating power to committee — No provision for quorum — Acts of committee must be done in presence of all members of the committee — Co-operative Societies Ordinance, 1948, s. 30.

This was an appeal against the decision of Abdoolcader J. ([1977] 1 M.L.J. 180). In this case the appellants had been jointly tried on three charges, first on a charge preferred against all three of them for jointly committing forgery for the purpose of cheating under section 468 of the Penal Code, secondly on a charge against the second appellant for criminal breach of trust under section 406 of the Penal Code, and thirdly a joint charge against the second and third appellants under sections 109 and 406 of the Penal Code for abetment of the criminal breach of trust charge against the second appellant. It was alleged that the three appellants, who were at all material times, the Chairman, Managing Director and General Manager/Secretary respectively of the Bank Kerjasama Rakyat Malaysia Berhad, a co-operative society registered under the Co-operative Societies Ordinance, forged the minutes of the Investment Committee of the bank resolving that (a) three million ordinary shares of Dunlop Estates Berhad and (b) M$1/ debenture stock of Kuala Lumpur Kepong Berhad be lodged with the First National City Bank for the purpose of securing letters of credit for the requirements of Tinju Dunia Sendirian Berhad for amounts not exceeding M$6.5 million. It was also alleged that the second appellant being entrusted with the shares and debenture stock belonging to the Bank Kerjasama Rakyat committed criminal breach of trust thereof and that the first and second appellants jointly abetted the commission of the offence.

The learned trial judge held that (1) the three appellants had forged the minutes of the Investment Committee for the purpose of cheating, an offence punishable under section 468 of the Penal Code; (2) the second appellant had committed criminal breach of trust of the shares belonging to the bank, an offence punishable under section 406 of the Penal Code and (3) the first and third appellants had abetted the offence of criminal breach of trust committed by the second appellant, an offence punishable under sections 109 and 406 of the Penal Code. He sentenced (a) the first accused 6 months on the first charge and $15,000 or 6 months on the second charge; (b) the second accused 2 years on the first charge and $25,000 or 9 months on the second charge; and (c) the third accused 1 year on the first charge and $15,000 or 6 months on the second charge. Each of the appellants appealed against the convictions and sentences and the Public Prosecutor appealed against the inadequacy of the sentences.

Held: (1) the learned trial judge was correct in holding that Tinju Dunia was not a subsidiary of the Bank Rakyat or its subsidiaries the Rakyat Corporation or United Manufacturers;

(2) the learned trial judge was correct in holding that the minutes of the Investment Committee was a false document as it was not made by the authority of the Investment Committee by whose authority it purported to have been made and the appellants had signed it dishonestly;

(3) the learned trial judge was correct in holding that the document was intended to support a claim of title, that is to cause the Bank Rakyat to part with its shares and that the document was intended to be used for the purpose of cheating;

(4) the learned trial judge was right in holding that the second appellant had misappropriated the shares, as the shares had been pledged without authority from the Bank Rakyat and to benefit an outside body;

(5) the learned trial judge was right in holding that the acts of the first and third appellant constituted abetment of the offence of criminal breach of trust committed by the second appellant;

(6) the sentence on the third appellant, who had little choice but to go along with the two other appellants, should be reduced to 1 day's imprisonment and $10,000 or 6 months on the first charge and $10,000 or 6 months on the second charge. As the two offences were akin or intimately connected with each other, if the fines were not paid the sentences of imprisonment in default should run concurrently;

(7) the sentence on the second appellant be altered to three years on each charge, the sentences to run concurrently;

(8) that the sentence on the first appellant, who was the principal actor in the case, should be increased to four years on the first charge and three years on the second charge, the sentences to run concurrently.

[Editorial Note: Leave to appeal to the Privy Council refused.]

Cases referred to:-

(1) *Motisinh* v. *State* A.I.R. 1961 Gujarat 117, 120.

(2) *State* v. *Parastram* A.I.R. 1965 Rajasthan 9, 10.

(3) *State Government, Madhya Pradesh* v. *Hifzul Rahman & Ors.* A.I.R. 1952 Nagpur 12.

(4) *Public Prosecutor* v. *Thall Gangadharudu & Ors.* 1956 Andhra Law Reports 678.

(5) *I.K. Siddappa* v. *Lalithamma* A.I.R. 1954 Mysore 119.

(6) *Freeman & Lockyer* v. *Buckhurst Park Properties (Mangal) Ltd. & Anor.* [1964] 1 All E.R. 630, headnote, 645H to 464 A2.

(7) *Pramatha Nath* v. *The State* A.I.R. 1951 Cal. 561, 583.

(8) *N.N. Burjorjee* v. *Emperor* A.I.R. 1935 Rangoon 453.

The following cases were also cited in argument:— *In re Regent's Canal Iron Co.* 1867 W.N. 79; *In re Tavistock Ironworks Co.* (1867) L.R. 4 Equity 233; *In re Liverpool* (1890) 59 L.J. (N.S.) 616; *Young* [1920] 2 K.B. 523; *Navaratnam* v. *Public Prosecutor* [1973] 1 M.L.J. 154; *Sinnasamy Selvanayagam* v. *The King* [1951] A.C. 83, P.C. 87; *In re B.V. Padmanabha Rao* A.I.R. 1970 Mysore 254, 257; *In re Rambilas & Ors.* A.I.R. 1915 Madras 600; *Gopal Krishan Majumdar & Anor.* v. *State of Tripura* A.I.R. (1955) Tripura 35, 38; *Thomas* 59 C.L.R. 279; *Tai Chai Keh* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 105, 108; *Ram Nath* A.I.R. 1925 All. 230; *The Queen* v. *Nim Chand Mookerjee* (1873) 20 W.R. 41 and 44; *Mohd. Jamal* A.I.R. 1930 Sind 64; *Bal Govind Shaha* (1899) 4 Cal. W.N. 309; *Queen* v. *Imanedi Bhooyah* W.R. Vol. 21, 8; *Raghunath Dass* A.I.R. 1920 Patna 502; *Krishnan Kumar* v. *Union of India* A.I.R. 1959 S.C. 1390; *Regina* v. *Gallagher* [1974] 1 W.L.R. 1204; 1211 G3; *In re P.D. Shamdasani* A.I.R. 1929 Bombay 443, 445; *Wilson* v. *Miers* 10 C.B. (N.S.) 348, 142 E.R. 486, Erle C.J. 492-3; *Attorney-General* v. *Great Eastern Railway* (1880) 5 App. Cas. 473; *Patent File Co.* (1870) 6 Ch. App. 83; *Matthews* v. *Goodday* (1881) L.J. Ch. 282, 283; *Harrold* v. *Plenty* [1901] 2 Ch. 314, 315; *A.P. Smith Mfg. Co.* v. *Barlow* (1953) 98 Atlantic Reporter, 2nd Series, 581, 586; *Evans* v. *Brunner* [1921] 1 Ch. D. 359; *Clay Hill Brick & Tile Co.* v. *Rawlings* (1938) 4 All. E.R. 100, 104H, 105 D3; *British Thomson-Houston Co. Ltd.* v. *Federated European Bank Ltd.* [1932] 2 K.B. 176, 183; *Athi Ayer* A.I.R. 1921 Madras 322; *Ouseph-Thommen* v. *Joseph Antony* [1957] Crim. L.J. 166; *Regina* v. *Feely* [1973] 1 Q.B. 530, 537A, 538E, 539 E4; *Eaglesfield* v. *The Marquis of Londonerry* (1876) 4 Ch. D. 693, 702, 703; *Rex* v. *Krishnan* A.I.R. 1940 Madras 329, 338; *Tay Choong Seng* v. *Public Prosecutor,* Malacca High Court Criminal Appeal 16/67, unreported; *Regina* v. *Kemp* 48 C.A.R. 131, 139; *Periasamy* v. *Public Prosecutor* [1966] 1 M.L.J. 138; *Benmax* [1955] 1 All E.R. 326; *Khoo Sit Hoh* v. *Lim Tian Thong* [1912] A.C. 323; *Wong Foh Hin* v. *Public Prosecutor* [1964] M.L.J. 149; *R.* v. *Peckham* 25 C.A.R. 125,

127, 128; *R.* v. *Guerin* (1932) 23 C.A.R. 39, 43; *Teja Singh & Mohamed Nasir* v. *Public Prosecutor* [1950] M.L.J. 71, 76; *Ismail bin Haron & Anor.* v. *Public Prosecutor* [1958] M.L.J. 288, 290; *Rauf bin Hj. Ahmad* v. *Public Prosecutor* [1950] M.L.J. 190, 192; *Yong Sang* v. *Public Prosecutor* [1955] M.L.J. 131; *Lee Lian & Ors.* v. *Public Prosecutor* [1956] M.L.J. 191; *Westfall* 7 C.A.R. 176, 179, 180; *Norton* 5 C.A.R. 76; *Ellis* 5 C.A.R. 41, 62; *Rodley* 9 C.A.R. 69, 76; *Reed* 17 C.A.R. 36, 39; *Morrissey* 23 C.A.R. 188, 190; *Browne* 29 C.A.R. 106, 113; *Leckey* 29 C.A.R. 128, 136; *Slender* 26 C.A.R. 155, 163; *Clewer* 37 C.A.R. 37, 40; *Lim Chin Poh* [1969] 2 M.L.J. 159, 1620; *Tan* [1950] M.L.J. 214; *Khoo* [1912] A.C. 323; *Peters* 1959 A.I.R. All. 483; *Roberts* [1942] 1 All E.R. 187; *Lim Kuan Hock* [1967] 2 M.L.J. 114; *Tay Choo Wah* v. *Public Prosecutor* [1976] 2 M.L.J. 95; *Prater* [1960] 1 All E.R. 298; *Chao Chong* v. *Public Prosecutor* [1960] M.L.J. 238, 239, 240; *Patent* (1870) 6 Ch. App. 83; *Loh Kwang Seng* v. *Public Prosecutor* [1960] M.L.J. 271; *National Coal Board* v. *Gamble* [1959] 1 Q.B. 11; *Dr. Ling Ngan Liong* v. *Public Prosecutor* [1964] M.L.J. 20; *Sinclair* v. *Neighbour* [1966] 3 All E.R. 988; *Jagdish Chandra* v. *Nilkanta* A.I.R. (1965) Tripura 42. *Subramaniam* [1956] M.L.J. 220; *Deputy Public Prosecutor* v. *Morgan* [1975] 2 All E.R. 347; *Jwala Prasad & Anor.* v. *Emperor* A.I.R. 1934 All. 331, 332; *Humphrys* [1976] 2 W.L.R. 857; *Public Prosecutor* v. *Lee Siew Ngock* [1966] 1 M.L.J. 225, 229; *Chothmal* v. *Ramachandra* A.I.R. 1954 Madhya Bharat 73; *R.* v. *Forbes* 173 E.R. 99, 100; *Ram Nath* (1924) Indian Law Reports, Vol. 47, 268; *Jaswantrai Manilal Akhaney* v. *The State of Bombay* A.I.R. 1956 S.C. 575; *A.J.E.G. Caspersz* v. *The King* A.I.R. 1949 P.C. 22; *Daulat Rai* [1915] Cr. L.J. 473, 475; *Mangal Sen* v. *Emperor* A.I.R. 1930 Lahore 57; *Sailendra Nath* v. *Emperor* 45 Cr. L.J. 1944, 431; *Ram Chand Gurvala & Ors.* v. *King-Emperor* A.I.R. 1926 Lahore 385; *Mohanlal Mulchand* A.I.R. 1950 Kutch 52; *National Coal Board* v. *Gamble* [1958] 3 W.L.R. 434; *NCB* v. *Gamble* [1958] 3 W.L.R. 434, 440; *Fireproof Doors* [1916] 2 Ch. 142, 149; *Muniandy* v. *Public Prosecutor* [1966] 1 M.L.J. 258, 259; *Tengku Mahmud* v. *Public Prosecutor* [1974] 1 M.L.J. 110, 111 G; *Balasingham* v. *Public Prosecutor* [1959] M.L.J. 193, 194; *Cohen* 24 C.A.R. 190, 199; *Noor Mohd.* P.C. case, [1949] A.C. 182, 192; *Ah Mee* v. *Public Prosecutor* [1967] 1 M.L.J. 220, 223; *Public Prosecutor* v. *Koh Eng Koon*, Johore Bahru Criminal Appeal 17/74; *Woon Kim Loo* v. *Public Prosecutor*, Malacca Criminal Appeal 4/66.

FEDERAL COURT.

R.R. Chelliah (*Gopal Sri Ram* and *P. Vijendran* with him) for the first appellant.

Edgar Joseph Jr. (*Rajan Rajasooria* with him) for the second appellant.

Abdul Kadir bin Haji Mohamed Kassim for the third appellant.

Tan Sri Datuk Haji Mohamed Salleh bin Abas, Solicitor-General (*Abu Talib bin Othman*, Deputy Public Prosecutor with him) for the respondent.

Wan Suleiman F.J. (reading the judgment of the Court):

Introduction

The first appellant was Menteri Besar of the State of Selangor, President of UMNO Youth, a Vice-President of UMNO, the leading political party in this country, Chairman of the Selangor Alliance during 1964-1967 and thereafter Chairman of the Selangor National Front. On 31st March, 1975, he chaired a meeting of the Executive Council of UMNO Youth which was also attended by Mike Ong and Bosco, show business people, who tried to sell them the idea of staging the Muhammad Ali-Joe Bugner fight in Kuala Lumpur. Projection papers were produced showing that while the fight might cost $10-12m to promote, it might bring in a profit of $4-5m. The idea looked good — at least on paper — and all members of the Executive Committee were attracted by the idea, as they had plans to build a sports complex for UMNO Youth costing about $½m. So it was decided in principle to promote the fight.

Ali wanted over US$2m tax free, and Joe Bugner US$½m also tax free — both amounts to be paid in advance to a stakeholder. In addition there were preliminary fees to be paid.

UMNO Youth did not have any money.

How were they to raise the necessary money?

As it happened, the first appellant was also Chairman of Bank Kerjasama Rakyat Malaysia Berhad, a co-operative society registered under the Co-operative Societies Ordinance, 1948. It is popularly known as Bank Rakyat ("the bank") and has been established to provide financial and other facilities to its members in accordance with co-operative principles.

It had millions of dollars, money deposited by its members. It also owned (a) 3 million ordinary shares of Dunlop Estates Berhad and (b) 1 million debenture stocks of Kuala Lumpur-Kepong Berhad ("the shares").

The second appellant, a chartered accountant, was Managing Director of the bank.

The third appellant was its General Manager and Secretary.

UMNO Youth's decision to stage the fight was subject to the first appellant getting from the Prime Minister the late Tun Abdul Razak government approval and backing.

The next day the first appellant was flying to Kuwait. At the airport he introduced the second appellant to some UMNO Youth Executive Council members and told them that he had got the green light from Tun Abdul Razak. The first appellant was away for three to four weeks and during his absence there were discussions about this fight between the second appellant and these members. As a result it was decided to send Mike Ong and a Jack Rennie to the US to bring the fight to Kuala Lumpur, and shortly after that Ismail Kamat (PW12), the Managing Director of United Manufacturers ("U.M."), a subsidiary of the bank, was also sent by the second appellant to the US to negotiate the fight. He went armed with a letter of authority dated 8th April, 1975, (D38), signed by Datuk Mohamed Rahmat, the Deputy President of UMNO Youth, as a credential to negotiate contracts for the fight. D38 clearly shows that PW12 was sent as an authorised representative of UMNO Youth, and its third paragraph states that PW12 had authority to confirm any terms of contract with the promoters of Muhammad Ali.

PW12 left for the States on 17th April and returned on 30th April, 1975, and during that period he signed seven agreements (P17) relating to the fight (six in the States and the seventh relating to Joe Bugner in London) on behalf of the second appellant and Tinju Dunia, although Tinju Dunia had not then been formally incorporated. These agreements were signed by PW12 after communicating with the second appellant by telephone and telex for instructions and involved heavy financial commitments.

While in the States, PW12 paid US$100,000 to Muhammad Ali on 23rd April before signing P17(6) and under its paragraph 4 Tinju Dunia had to establish an irrevocable letter of credit for US$1.9m in favour of Muhammad Ali, the money payable to him as soon as the fight had started; and there was also a forfeiture clause.

On his way home PW12 stopped over in London to sign a similar agreement (P17(7)) with Joe Bugner. Under this he had to pay Bugner US$50,000 by 2nd May, 1975, and the balance (US$450,000) by way of an irrevocable letter of credit by 9th May. There was also a forfeiture clause.

PW12 had to pay these sums urgently, else the fight might have been taken elsewhere. On the second appellant's instructions these payments were made out of U.M. money.

The first accused on his return from Kuwait on 20th April, entered the General Hospital, Kuala Lumpur, for a check-up and PW5, the second appellant, Datuk Mohamed Rahmat and some other UMNO Youth Executive Council members went to see him there in connection with the fight. Many things were decided then, including the formation of Tinju Dunia.

Tinju Dunia is a private company limited by shares and was incorporated on 3rd May with a registered office at 140 Jalan Ipoh, Kuala Lumpur, which are the premises of the present head office of the bank. Its authorised capital is $25,000 divided into 25,000 shares of $1 each, and the paid-up capital only $2 being the two subscribers' shares of $1 each. The second appellant and PW5 were its subscribing shareholders and initial directors. The second appellant was also its chairman. The first appellant was adviser.

On 2nd May, PW12 received a telex (D29) from Don King, a boxing promoter in the United States connected with Muhammad Ali, saying that letters of credit and cash had not been received and that Ali threatened to tell a press conference that Malaysia had not paid the money as provided in the contracts and that the fight would be taken elsewhere. The telex also said that the letters of credit and cash were supposed to have been received that very day and that they should be sent by the 3rd. This was a surprise to PW12 because according to the contracts regarding Ali the letters of credit should be sent by 5th May. It was understood of course that if the fight did not take place in Kuala Lumpur, the money already paid totalling US$750,000 would be forfeited. So events then moved fast.

PW12 passed the telex to the second appellant.

On 2nd or Saturday, 3rd May, the second appellant telephoned Mr. Bird (PW13), resident Vice-President of the First National City Bank ("FNCB"), to ask if FNCB would agree to open letters of credit to the amount of some $6.5m payable to the promoters in US of the fight. Mr. Bird asked what security would be available. The second appellant replied that he would provide the shares belonging to Bank Rakyat valued at slightly above the amount of the letters of credit. As a result of that conversation PW13 addressed a memorandum (P8) to Jeannie Lim (PW14). P8 which is headed "Re Tinju Dunia Sendirian Berhad", stated in its body that — "Apparently the company does not have any paid-in capital yet as the local promoters here will be raising the funds over the next three weeks" and goes on to state that "presumably the cash being raised by the promoters will be deposited in Tinju Dunia's account and can then be set up as a 100% margin account on the letters of credit and the shares released at that time".

To effect this transaction, on the Monday a document (P12) dated that day (5th May) purporting to be the minutes of the Investment Committee of the bank was made and signed by the three appellants setting out a resolution purportedly of that Committee authorising the pledging of the shares for the purpose indicated.

That document reads as follows: —

"BANK RAKYAT
(BANK KERJASAMA RAKYAT MALAYSIA BERHAD)
Bangunan Bank Rakyat,
No. 140, Jalan Ipoh, Peti Surat 1024,
Kuala Lumpur 02-11.

5th May, 1975.

Minutes of Investment Committee of
Bank Kerjasama Rakyat (M) Berhad

It is resolved that the following shares be lodged at First National City Bank, Jalan Ampang, Kuala Lumpur for the purposes of securing Letters of Credit requirements of Tinju Dunia Sdn. Bhd. for amounts not exceeding M$6.5 million.

a) Three million ordinary shares of Dunlop Estate Berhad,
b) M$1 million Debenture Stocks for Kuala Lumpur Kepong Berhad.

The above securities are placed as collateral for a period not exceeding three months from the date hereof.

Sd.
.....
DATO' HAJI HARUN IDRIS
Chairman.

Sd.
.....
DATO' ABU MANSOR BASIR
Managing Director.

Sd.
.....
ISMAIL DIN
Secretary."

It was forwarded to FNCB under cover of a letter (P11) written on the bank's letterhead dated 5th May and signed by the second appellant as Managing Director of the bank. P11 reads as follows: —

"BANK RAKYAT
(BANK KERJASAMA RAKYAT MALAYSIA BERHAD)
Bangunan Bank Rakyat,
No. 140, Jalan Ipoh, Peti Surat 1024,
Kuala Lumpur 02-11.

5th May, 1975.

The Manager,
First National City Bank,
Jalan Ampang,
Kuala Lumpur.

Dear Sir,

Tinju Dunia Sdn. Bhd.

This letter is to inform you the lodgement of the following shares to your Bank to secure the facilities as required:—

a) Three million ordinary shares of Dunlop Estates Berhad.
b) M$1 million Debenture Stocks of Kuala Lumpur Kepong Berhad.

In respect of the three million ordinary shares of Dunlop Estates Berhad they are in lots of one thousand shares and therefore three thousand of such share certificates are now forwarded to you. In view of the urgency of this matter

there was not time to prepare the necessary transfer forms accompanying these shares, but this letter hereby confirms that the transfer forms duly signed are to be delivered to you as soon as possible.

Attached herewith also a copy of the Minute of the Investment Committee of Bank Rakyat authorising the bank lodging these securities in respect of the above company's account.

Yours faithfully,
Sd.
DATO' ABU MANSOR BASIR
Managing Director."

Sd. (?)
C.C.

Also sent with it by the second appellant was a letter P13 dated the same day. This letter purported to be from Tinju Dunia and was signed by the second appellant on behalf of Tinju Dunia. It confirmed the telephone conversation between Mr. Bird and the second appellant on Saturday, 3rd May, regarding the request for letters of credit on Tinju Dunia's account. It reads as follows: —

"Tinju Dunia Sdn. Bhd.,
140 Jalan Ipoh,
Kuala Lumpur 02-11.
5th May 1975.

The Manager,
First National City Bank,
Jalan Ampang,
Kuala Lumpur.

Dear Sir,

Tinju Dunia Sdn. Bhd's a/c

I refer to our telephone conversation between Mr. Richard Bird/Dato' Abu Mansor on Saturday 3rd May, as regards the remittances and issue of Letter of Credit on account of the above company, and as agreed I hereby forward to you the following securities as collateral:—

a) Three million ordinary shares of Dunlop Estates Berhad,

b) $1 million Debenture Stock of Kuala Lumpur Kepong Berhad.

2. The total market value of the above shares and stock is about $6.5 million.

3. In respect of the above, please execute immediately the issue of Letters of Credit as per specified in letters of application to open the said Letters of Credit.

Yours faithfully,
Sd.
Authorised Signatories
Tinju Dunia Sdn. Bhd."

On receipt of these documents and the shares, FNCB opened the necessary letters of credit applied for by Tinju Dunia, to the amount of US$1.9m payable to Muhammad Ali and US$450,000 to Joe Bugner on production of a newspaper clipping showing that the bout had occurred.

It will be observed from these three documents that the application for letters of credit was made by the second appellant on behalf not of the bank but of Tinju Dunia, that FNCB agreed to open the letters of credit provided there was security, that the security provided consisted of shares belonging not to Tinju Dunia but to the bank, and that the security was handed over to FNCB by the second appellant on behalf of Tinju Dunia, not of the bank. FNCB accepted the security on the faith of a "resolution" of the Investment Committee of the bank signed by its Chairman, Managing Director and Secretary.

The Ali-Bugner fight was held in Kuala Lumpur on 1st July. It was a financial success for the two fighters who received their purse money in full and tax-free. It was however a financial flop for Tinju Dunia; instead of making a profit of between $4m and $5m, it suffered a loss of about $7m. This was because its only income was from the sale of tickets locally, and experienced Don King had cunningly arranged for the fees paid by TV all over the world to show the fight (estimated by Mike Ong when briefing UMNO Youth to come to US$6.5m net) to be paid to him, in the States and that he was to retain the first US$300,000 and to pay 85% of the balance to Tinju Dunia. But after the fight he conveniently ignored all pleas to remit the promised share to Tinju Dunia. We shall never know whether he collected US$300,000 or more.

In due course FNCB asked for their money back. On 11th October Bank Rakyat paid to its subsidiary, United Manufacturers, $6m, which money was paid by United Manufacturers to FNCB four days later. There is still some money owing by Tinju Dunia to FNCB who retained the shares until they were handed over to the police.

The prosecution alleged that the bank had nothing to do with Tinju Dunia, the appellants signed P12 in their personal capacity and had no authority from the Investment Committee of the board of the bank, nor of the board nor of the bank to so sign it, that they had no authority to pledge the bank's shares with FNCB as collateral for the letters of credit for the benefit of Tinju Dunia, that therefore P12 was a forgery, that FNCB opened the letters of credit thinking that the appellants had such authority, that further the second appellant had committed CBT of the shares when he parted with them and that the first and third appellants had abetted this second offence.

After a trial lasting 59 days, the longest in the history of this country, the trial judge held ([1977] 1 M.L.J. 180) that

(a) the three appellants had forged P12 for the purpose of cheating, an offence punishable under section 468 of the Penal Code;

(b) the second appellant had committed CBT of the shares belonging to the bank (section 406 of the Penal Code); and

(c) the first and third appellants had abetted the offence of CBT committed by the second appellant (sections 109 and 406 of the Penal Code).

Each of the appellants appeals against the convictions and sentences, and the Public Prosecutor appeals against the inadequacy of the sentences.

Forgery

The first charge — against all three accused — was one of forgery under section 468 of the Penal Code.

The section reads:

"Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished...."

What is forgery and what is cheating?

Section 463 defines forgery as follows:

"Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any

person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

Section 464 says how a false document may be made, and it is common ground that only its first limb is relevant. Omitting irrelevant words, it reads:

"A person is said to make a false document —

First. — Who dishonestly or fraudulently executes a document with the intention of causing it to be believed that such document was executed by the authority of a person by whose authority he knows that it was not executed."

Cheating is defined by section 415 in the following words:

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or to omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, is said to 'cheat'.

Explanation 1. — A dishonest concealment of facts is a deception within the meaning of this section.

Explanation 2. — Mere breach of contract is not of itself proof of an original fraudulent intent."

Then follow several illustrations of the meaning of cheating, none of which is relevant to this case.

Section 24 defines "Dishonestly" and reads:

"Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing 'dishonestly'."

Section 23 defines "Wrongful gain" and "Wrongful loss" in the following words: —

'Wrongful gain' is the gain by unlawful means of property to which the person gaining is not legally entitled.

'Wrongful loss' is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property."

Ingredients of forgery

With respect we agree with the learned trial judge that for the purposes of the forgery charge under section 468, the prosecution had to prove three main points, namely:

(1) that P12 was a false document within the meaning of the first limb in section 464;

(2) that the making of the false document comes under at least one of the intents in section 463; and

(3) that P12 was intended to be used for the purpose of cheating.

First main point

We agree that under the first limb in section 464 the prosecution had to prove four ingredients, namely that the accused:

(a) made P12;

(b) intended P12 to be believed as having been made by or by the authority of the Investment Committee of the bank;

(c) knew P12 was not so made; and

(d) made P12 dishonestly or fraudulently.

As to (d) the prosecution relied only on dishonest intention on the part of the accused.

Second main point

With regard to the intent necessary under section 463 the learned trial judge considered and we agree that it was enough for the prosecution to prove an intent on the part of the accused to support a claim or title, an intent to cause the bank to part with its shares and an intent to enter into a contract.

Third main point

With regard to the third main point, namely that PW12 was intended to be used for the purpose of cheating, the learned trial judge considered and we agree that the prosecution need not prove the actual commission of the offence of cheating but only that the three accused intended P12 to be used for the purpose of cheating. Specifically, he considered and we agree that the prosecution must prove that the three accused by means of P12 intended to deceive and to induce FNCB to issue letters of credit on account of Tinju Dunia, which they would not have done if not so deceived, and that such act was likely to cause damage to FNCB in property, as without P12 the pledge would not have been efficacious and the security would not have been accepted.

Tinju Dunia's connection with the bank

Before dealing with the several grounds of appeal raised, we think it desirable to dispose first of the question whether or not Tinju Dunia had any legal connection with the bank, because there will be many references to Tinju Dunia in the rest of our judgment, and such references will be difficult to understand unless we state at the beginning our answer to this question.

The appellants tried to establish that Tinju Dunia was a sub-subsidiary of the bank. At first counsel for the second appellant stated early during the trial that he would establish that Tinju Dunia was a subsidiary of United Manufacturers, a subsidiary of the bank, but during the course of the trial he changed this line of defence by attempting to prove that Tinju Dunia was a subsidiary of Rakyat Corporation, another subsidiary of the bank.

The defence was anxious to show that Tinju Dunia was connected with the bank, because if that was done then their next line was to show that the bank or the first or the second appellant had power to act for the benefit of the bank, that any act benefiting a subsidiary or sub-subsidiary benefited the bank, that pledging the shares might benefit the bank by benefiting Tinju Dunia, that therefore they had power to pledge the shares. Pledging the shares was, it was admitted, risky, and as it turned out a heavy loss was incurred; but, it was said, in business nothing venture nothing gain, and not all decisions of the first and second appellants on behalf of the bank had been completely without risk.

In support of the argument that Tinju Dunia was a subsidiary of Rakyat Corporation much evidence was produced, all of which was carefully considered by the judge, and he came to the conclusion that Tinju

Dunia was not a subsidiary of Rakyat Corporation and therefore had no legal connection with the bank, as indeed was admitted by the first appellant himself to the Board at their emergency meeting on 12th March, 1976, a few hours after his arrest.

Before us all the relevant evidence on this point was brought to our notice, and it was emphasised that the bank and Tinju Dunia shared the same registered address, shared some directors, shared some officers and shared the same solicitors and accountants.

The evidence that Tinju Dunia was connected with the bank was rather convoluted and the learned judge after considering it concluded that it was not a subsidiary of the bank or Rakyat Corporation or United Manufacturers. He said:

"... Tinju Dunia, which apparently was conceived at the General Hospital in Kuala Lumpur, developed as a floating foetus bereft of any umbilical cord and was delivered by design as an orphan of undetermined lineage and uncertain heritage, maturing into a waif of no fixed abode and destined to be shuttled *ex post facto* into such parentage as the whims and fancies of its progenitors would dictate in the wake of shifting circumstances — certainly not a picture of a veritable midwife's delight as she would not know from whom to collect her fees.... The moral of all this is that the legitimate offspring of normal nativity does not have to look at his birth certificate to discover who his father is."

The learned judge's finding is not surprising and we uphold it.

Was P12 a false document?

The learned trial judge held that it was. The appellants submitted that it was not, that the prosecution had to prove that it was not executed by authority of the person by whom or by whose authority it purported to have been executed and that the prosecution had failed to do so. Mr. Chelliah said that P12 purported to have been signed by the three appellants and in their respective capacity as Chairman, Managing Director and Secretary of the bank, but the signature and the designation under each signature were genuine. It contained an incorrect recital, but that did not make the document a false one. He cited in support this passage from paragraph 9(a) at page 119 of the judgment in *Motisinh* v. *State*[1]:

"That would amount to making a false statement and would not amount to making a false document."

He also cited this passage from paragraph 10 of the judgment at page 120:

"Before an attestation can amount to forgery, one of the essential requirements is that it must be made or signed by a person by whom it does not purport to be made or signed."

We do not think that this case is helpful. There the accused, a public official, was entrusted with money for distribution to cotton growers, one of them being one H.M. and the amount payable to him was Rs. 0-10-0. The prosecution alleged that H.M. had died, that the accused prepared a false document purporting to be a receipt by H.M. for that amount (H.M.'s signature appeared in the 4th column of exhibit 11) and that the receipt was attested by the accused initialling in the 5th column. There was no evidence that the signature in the 4th column was made by the accused. The court held that assuming that the initials of the accused in the 5th column amounted to an attestation of the signature in the 4th column, that amounted to a statement that the signature was the signature of H.M., but as there was no evidence that the signature in the 4th column was made by the accused, the accused was not guilty of making a false statement. The learned appellate judge there said in paragraph 10 at page 120: —

"I hold that a person who merely attests a forged signature on a document of receipt cannot be convicted of forgery.... Before an attestation can amount to forgery, one of the essential requirements is that it must be made or signed by a person by whom it does not purport to be made or signed."

We are of the opinion that the above case is not helpful to the question before us (whether P12 was a false document or not) because it did not deal with the question whether the attestation clause was made by the *authority* of a person by whose *authority* the accused knew that it was not made.

Mr. Chelliah also relied on *State* v. *Parasram*[2] as authority for the proposition that the making of entries that are incorrect or unauthorised did not make a document a false document and that P12 only contained incorrect and unauthorised entries. This case does not in our opinion help either. There the accused had power to make the entries in question, unlike the case before us.

Next Mr. Chelliah cited *State Government, Madhya Pradesh* v. *Hifzul Rahman & Ors.*[3] which he said was to the same effect as the above case and he cited headnote (e) at page 12 and paragraphs 23 and 24 of the judgment. With respect, we do not think that this case was helpful. The narrow point for consideration there was whether the relevant exhibits (P40 and P41) were made on any day other than 26th April, 1947, and the accused was acquitted because there was no proof that the documents were so made.

The fourth case cited by Mr. Chelliah on this point was the *Public Prosecutor* v. *Thall Gangatharudu & Ors.*[4] which Mr. Chelliah contended was on all fours with our case. He referred to this passage in the judgment there:

"In my view, to constitute an offence of forgery, the document must be purported to have been signed, made or sealed by a person who did not in fact do it; it is of the essence of making a false document that the signature, seal or the date of it should be false. The fact that a document contains false recitals or statements which induce a person so deceived to part with or deliver property would not make it an offence of forgery." (Page 682).

Accordingly the court there held that the accused had been rightly acquitted.

We think that the decision was right on the facts, but it does not help the appellants before us. There the accused who were officers of a co-operative society applied on behalf of the society to a bank for a loan. The application was accompanied by a statement of stocks of yarn and finished goods and a cash balance with the society, and a document (Exhibit P14) purporting to be a copy of a resolution passed by all the directors of the society requesting the bank to lend the money was also annexed. The bank granted the society the loan applied for. The accused were charged with cheating and forgery. They were acquitted. As regards the forgery charge, the acquittal was on the ground that, first, there was no proof that no resolution was ever passed and, secondly, the bank

granted the loan not because they relied on the resolution but because they relied on a report and recommendation of their own supervisor to whom the application had been referred for enquiry and report. In our view, the words cited from the judgment should be limited only to the facts of that case. Also that case did not deal with the word "authority" which occurs twice in the first limb of section 464 of the Penal Code.

We are of the opinion that *I.K. Siddappa* v. *Lalithamma*[5] is closer to the facts of the case before us. There the accused caused marriage invitation cards to be printed under the name of two persons DW2 and PW2 announcing the marriage of the accused to the complainant, a young lady of 20 who had recently inherited property worth about Rs. 40,000, to take place on the morning of 28th June, 1951, in the house of one P.B. Neither DW2 nor PW2 had authorized the use of their names, and in fact no marriage had been agreed between the accused and the young lady. The accused distributed these invitations to friends and relatives. He was held guilty of forging the wedding invitation cards, as they had been prepared and published without the authority of any of the persons concerned.

In what way is *Siddappa* closer to this case?

P12 was typed on the bank's letterhead, it was headed "Minutes of Investment Committee of [the bank]", it purported to be a resolution of that committee authorising the lodging of the shares with FNCB for the purpose of securing letters of credit required by Tinju Dunia, and it was signed by the three appellants each of whom gave his respective designation as Chairman, Managing Director or Secretary.

The learned trial judge found that on 14th January, 1972, the Board of the bank had appointed an Investment Committee with power to make immediate decisions on investments up to $200,000 and the members thereof were the Chairman or Vice-Chairman, the Managing Director, the Registrar, the Treasury representative and one other person. Then over three years later on 26th March, 1975, the Board appointed an Investment and Loan Committee consisting of the President, Vice-President, the Managing Director, the Registrar and the Treasury representative with powers to approve loans exceeding $100,000 to members. The defence contended that P12 was a resolution of the 1975 committee and that this committee had power to make investments as well as grant loans exceeding $100,000, although this was not so stated in the minutes, and that any two members of that committee could form a quorum. The learned judge found that there had never been any notice calling for meetings of the 1972 or 1975 committee, that apart from the first and second appellants, none of the members of those committees had ever received any such notice or attended any meetings of either committee. He ruled and we agree that the law is that where a board of directors had delegated its power to a committee without specifying the committee's quorum all acts of the committee must be done in the presence of all members of the committee, that if a special meeting of that committee had to be specially convened for a particular purpose every member of it ought to have had notice of and a summons to the meeting and that accordingly the omission to summon one member of the committee and the fact that the notice had not stated the object of the meeting with sufficient particularity vitiated the proceedings of that body.

He ruled that the first and second appellants in purporting as members of the Investment Committee of the bank (whichever one it was) to resolve as in P12 acted unilaterally and without authority, and if there was a meeting between them it was not a meeting of either committee but only a meeting of the two in their *personal* capacity.

With respect we agree with the learned trial judge that P12 was not made by the authority of the Investment Committee by whose authority it purported to have been made and that the three appellants knew that it was not so made. We are therefore of the opinion that P12 was a false document.

In this connection he also held and we agree that P12 and the two related documents P11 and P13 were all necessary and important and that P12 was important because the shares were registered in the name of the bank and without these three documents and the shares FNCB would not have opened the letters of credit on 5th May.

Did the appellants sign P12 dishonestly?

The prosecution and the learned trial judge said yes, and the defence said no.

With respect we think that the judge was right.

It is true that on the Saturday (3rd May) the second appellant had to move fast to raise the money required which had to be remitted at the latest by the following Monday (5th May), and that it was therefore reasonable for him and the first appellant to follow previous practice by approaching FNCB on their own, pledging the stock and shares without prior reference to the Board. But on this occasion they did not follow previous practice, they did not bring the matter to the Board nor to its Executive Committee for subsequent ratification. The accused had prior to their arrest many opportunities of bringing the relation of Tinju Dunia to the attention of the Board, its Executive Committee and yet none of them did so until *after* their arrest on 12th March, 1976, over ten months later, and it may be thought as was done by the judge, that if the fight had shown a profit the accused would have quietly redeemed the shares and nobody would have known anything about this business.

The first occasion when this matter could have been told to the Board was when it met on 29th August, 1975. But even long before that the appellants could have informed and sought the agreement of the other three members of the 1975 Investment and Loan Committee, all of whom lived in Kuala Lumpur and could have been reached quickly and easily, but even that was not done.

Indeed the judge found as a fact, and we do not think that it is right for us to disturb that finding, that at the Board meeting on 29th August some one

asked a question about Tinju Dunia and that the second appellant replied denying that Tinju Dunia had anything to do with the bank and that apart from this denial there was no mention of Tinju Dunia nor of the transaction with FNCB by any of the three accused.

The second occasion when this matter could have been formally brought to the attention of the bank was at its AGM on 6th September, 1975, and then also the judge found no mention by any of the appellants of Tinju Dunia or P12. Two documents were presented at that meeting. The Annual Report of the Bank for 1973-4 (P57) and the chairman's report for the years 1973-4 (exhibit D41(id)). The first document was admitted by the judge, and he found that the report did not mention Tinju Dunia as one of the bank's subsidiaries, and that this could not have been because Tinju Dunia was not formed until after the period covered by the report because it did refer to the opening of the Kuantan branch of the bank on 20th January, 1975, and of the Johore Bahru branch on 19th July, 1975. The judge felt that the non-disclosure of Tinju Dunia was significant.

D41(id) was not admitted because, the judge said, the accountant who made this report had not been called. We agree with counsel for the appellants that it should have been admitted — not, however, as evidence of the truth of its contents but simply as a document which was presented to and was in the hands of persons attending the A.G.M. We shall deal with the significance of this document in its proper place below.

The third occasion when P12 could have been brought formally to the attention of the authorities was on 28th October, 1975, when the second appellant briefed the late Tun Abdul Razak on the activities of the bank. The second appellant had prepared some charts for the briefing and agreed that he did not mention Tinju Dunia at the briefing nor did it appear in any of the charts to show its connection with the bank.

The fourth occasion when P12 and Tinju Dunia's connection with the bank could have been brought to the notice of the bank occurred at a Board meeting on 5th November, 1975, but none of the three appellants ever mentioned P12 and the judge found that after the first appellant had left the meeting PW22 in the presence of the other two appellants asked about Tinju Dunia and the second appellant denied that Tinju Dunia had any connection with the bank. The third appellant claimed that if such a denial was made it was made when he was outside the room, but we uphold the judge's finding that he was not then outside the room.

The questions alleged to have been asked and the denials alleged to have been made by the second appellant at the Board meetings on 29th August and on 5th November did not appear in the minutes, and Mr. Joseph on behalf of the second appellant argued that in the light of sections 91 and 92 of the Evidence Act they were not admissible in evidence. With respect we agree with the trial judge that they were admissible for the reasons given by him.

The fifth occasion when the appellants could have brought P12 and Tinju Dunia's connection with the bank to the notice of the authorities was at a meeting of the Executive Committee of the Board on 27th November, 1975, when, according to the minutes, the second appellant informed the meeting of complaints made by Tun Abdul Razak on 18th October, regarding the bank's activities. The first and third appellants were also present at this meeting and the learned judge found, and we agree with his finding, that no mention was ever made about P12 and Tinju Dunia by any of the appellants at the meeting.

Police investigation into the affairs of the bank had begun on 5th October, 1975. Some directors approached by the police became concerned. One of them Datuk Sulaiman bin Nainam Shah who was also Vice-Chairman of the bank (PW20) wrote a letter dated 12th February, 1976 (P46) to the third appellant as Secretary requesting a Board meeting, and as there was no reply he wrote again to the third appellant on 2nd March, 1976 (P47), and only then did the third appellant reply, by letter of 5th March, 1976 (P48) saying that he would get in touch with the first and second appellants (the latter was away overseas) and then inform PW20 when a date had been fixed. Ultimately an emergency meeting of the Board was fixed for the morning of 12th March, and the meeting started that morning at 10.15 with Datuk Sulaiman in the chair and in the presence of the third appellant. The first appellant who had been expected was not present as he had that very morning been arrested by the police at his home, and then brought to court and charged.

At this morning session PW20 asked the third appellant if Tinju Dunia had any connection with the bank and whether any payment had been made by the bank to Tinju Dunia, to which the third appellant replied that he was not in a position to know. In cross-examination by counsel for the third appellant, PW20 said that this was what took place at the meeting although it does not appear in the minutes of that meeting which were, of course, prepared and on confirmation signed by the third appellant himself, PW20 then told the third appellant rather sharply that as Secretary and General Manager he should know. It was then only that the third appellant said that a rough amount of $7.7m had been spent by the bank for Tinju Dunia. Nothing however was said about the pledging of the shares and P12.

The meeting adjourned at 11 a.m. and soon afterwards the third appellant was arrested by the police who had been waiting outside.

The meeting resumed at 2.45 p.m. with the first appellant in the chair and in the presence of the third appellant. At this meeting the first appellant made a statement in which he said,. *inter alia*, that the meeting was called to clarify the position of Tinju Dunia to the Board in order to find ways and means to safeguard the interest of the bank. He went on to explain that the involvement of the bank in Tinju Dunia was openly done and not in secret and that he himself had met and consulted Tun Abdul Razak who agreed that the fight be held but not by using Government money as the nation was suffering a re-

cession, and that Tun Abdul Razak was informed about a suggestion to use the bank's fund to which he agreed, and with that agreement he (the first appellant) had directed the second appellant, the Managing Director of the bank, to study the boxing project. He said that during the consultation with Tun Abdul Razak it was agreed in principle that if any loss was incurred the Government would consider reimbursing the loss and that there would be exemption from income tax. He went on, *inter alia*, to state that as a result Tinju Dunia was formed and explained that although the facilities, finance and officers of the bank were used in the implementation of the Tinju Dunia project, he deliberately did not want the boxing project to be legally connected with the bank, not with the intention to cheat but purely with the intention to protect the interest and security of the bank from any claim, litigation and the like, and that, in such circumstances, legally Tinju Dunia had no connection with the bank, but in reality it did. Thus for the first time, as the judge found, was use of the bank's money for Tinju Dunia and Tinju Dunia's relation with the bank put formally before the Board or any body of the bank, and that was 10 months after the date of P12 and only after the arrest of the first and third appellants. (The second appellant who was still away on the bank's business was not arrested until 26th March on his return from overseas).

The trial judge considered at length the evidence and argument that the first appellant had obtained approval from Tun Abdul Razak to use the bank's money for the purpose of the fight and came to the conclusion that there was no such authority, and we agree with that finding.

At the trial the appellants sought to show by evidence that in fact the bank's directors did know of the bank's involvement in Tinju Dunia long before this emergency Board meeting and even before the big fight on 1st July, 1975.

The prosecution suggested that the first appellant went into the promotion of this fight in order to burnish his political image as an UMNO Youth leader and as a national leader and for this purpose he used the bank's shares hoping to redeem them after receipt of the expected profit from the fight, and they introduced exhibit P18, four articles in four issues of the Sunday Mail and Malay Mail written by Mr. Francis Xavier Emmanual (PW4), a reporter and sub-editor of the Malay Mail in charge of sports; and in none of these reports relating to the fight was there mention of the bank's involvement. The most important one was P18(1) from the Sunday Mail of 18th May, 1975, under the heading "Ali-Bugner fight to cost $12 million", which attributed to the first appellant the statement that UMNO Youth had deposited about $10 million in banks in London and the United States as guarantee for the fight, that the money had been sent by bank draft a few days previously and that UMNO Youth was the sole sponsor of the fight and Tinju Dunia was only the local sponsor. PW4 said in evidence that all this was told to him by the first appellant at an interview he had with him on 17th May after the news of Muhammad Ali defeating Ron Lyle at Las Vegas, and the trial judge accepted this evidence. We agree with the judge's remark that P18(1) also showed deliberate concealment by the first appellant of the use of the bank's shares.

Just as the prosecution sought to prove by evidence that there was no disclosure of the bank's involvement in the fight before the arrest of the first and third appellants, so did the appellants seek to show by evidence that they did so and on several occasions and that there was nothing secret about the whole affair.

On 2nd June, 1975, there was an opening ceremony at the branch of the bank at Telok Anson attended by the first appellant and several directors, and some witnesses said in evidence that in his speech the first appellant did mention that the bank was responsible for bringing the fight to Kuala Lumpur, while other witnesses denied this or said that they did not hear it. The press account of this ceremony (D62) made no mention of this part of the speech and the judge did not accept that there was in fact such mention and we do not think it right that we should disturb this finding.

We now turn to D21, an article in the New Straits Times of 25th June, 1975, and D63, an article in Berita Harian of the same date, written as a result of a press interview given by the first appellant. It is clear that the first appellant then did say that Tinju Dunia, the promoter of the fight, was a subsidiary of the bank and that the bank was the source of the finance for the fight which was sponsored by UMNO Youth. He further said that he had formed Tinju Dunia after getting Tun Abdul Razak's blessing, denied that the fight was being staged for political reasons and further said that the only reason for staging the fight was to sell Malaysia abroad. With respect we agree with the judge's remark that this disclosure some seven weeks after the date of P12 was made at the wrong time and at the wrong place and perhaps even to the wrong audience, that such disclosure should have been made much earlier to the 1972 Investment Committee or to the 1975 Investment and Loan Committee, whichever it was, and to the Registrar of Co-operative Societies, which was not done, that the method of using the bank's assets was never revealed, and the disclosure, "like a bikini, was perhaps important only for what it in fact concealed in that it did not reveal resort to the bank's resources and facilities in the proper forum at the proper time to an authorised body actually concerned, or the *modus operandi* for such recourse."

The fight itself took place, as already stated, on 1st July, 1975, and it was significant that the souvenir programme for the fight contained profuse references to UMNO Youth as the sponsors and Tinju Dunia as the promoters but not a word about the bank or its involvement. A specimen of the complimentary tickets for the fight (D59) mentioned the patronage of Tun Abdul Razak, the auspices of UMNO Youth and the presentation of the fight by Tinju Dunia but not a word appeared in it about the bank. PW19 who saw the fight free was invited by UMNO Youth, not the bank.

We now come to D41(id) which the judge did not admit and which we think should have been admitted

in evidence. Assuming that the judge had admitted it, then it was submitted by counsel for the appellants that then the judge should and would have taken into account a note being the last sentence in that exhibit which translated into English reads:

"A MATTER AFTER THE FINANCIAL YEAR

In May 1975 an investment of capital value $4,000,000 was made with a local bank as security for credit facilities granted to a company."

and that if he had done so he would have realised that at the AGM at which this exhibit was presented the appellants did disclose to all present the transaction effected by P12.

With respect we think that even if the judge had admitted this exhibit he would have been hard put to find that there had been such disclosure by the appellants, for the note seemed to us to have been only a smoke screen.

For one thing, the exhibit was clearly headed in Bahasa Malaysia "Report of the Chairman of [the bank] for the years *1973* and *1974*", and the reader would not have expected to find in it information relating to the year 1975 when Tinju Dunia was formed. For another, if the intention was honestly to direct the reader's attention to any matter that had happened in the year 1975, one would have expected it to be given some prominence, whereas this particular note is one of a series of six entitled at the top in bahasa Malaysia "Notes [of the accountant] to the accounts 31st December, *1973* and *1974*," *not* 1975, each note was numbered separately, but not this particular note, and unless the reader's attention was specifically directed to it, he might be forgiven for thinking that it related to the activities of the bank for the years 1973 and 1974 only.

It would seem to us that this ambiguous note was of a piece with the rest of the conduct of the appellants in deliberately obfuscating the transaction effected by P12. Counsel before us stated that if there was any vagueness in the language of the note it was not the fault of the appellants as it was written not by any of them but by the accountant. That may be so, but if the appellants had been honest they could have suggested to the accountant to be more explicit.

It was further submitted to us that the fact that the accountant saw fit to insert this note in itself showed that he must have seen references to P12 in the books kept by the bank and that therefore it must have been disclosed. We have no doubt that many persons in the bank, apart from the three appellants, knew of P12 and the pledging of the bank's shares, for example Cik Ghazirah who typed it and related documents and other bank officers who took the various documents to FNCB; but this disclosure was inevitable and was to the wrong persons. The disclosure should have been made to the Investment Committee or to the Board or the Executive Committee, and that — as the learned judge found — was not done, until after the arrest of the first and third appellants.

There is also the evidence of the repayment of the money (some $6m) owing to FNCB. FNCB granted these facilities for three months, but extended the period. The bank did not repay FNCB direct. It followed an indirect way. First, it paid the $6m to its subsidiary, United Manufacturerers. That was on 11th October, 1975. The payment voucher in D25 stated the purpose of this payment as "Advance for working capital". Four days later the United Asian Bank paid $6m to FNCB. On 21st October, 1975, United Manufacturers paid the United Asian Bank $6m and on 27th November, 1975, debited Tinju Dunia's account with $6m. True the second appellant explained in evidence why this method was adopted ("a matter of convenience"), but his explanation was fully considered by the judge and we agree with his conclusion that there was no reason why the bank could not have paid FNCB direct "if indeed the whole transaction was open, untainted and honest".

Mr. Chelliah submitted that this method of payment was taken by the judge as evidence against the first appellant and that he should not have done so, as it was unknown to him who was not concerned with the internal workings of the bank. It is true that when recapitulating the cases against the appellants he mentioned this as some of the evidence against all of them, but we do not think that this is fatal, because previously he had considered the case against each accused separately.

Did the appellants intend to use P12 for the purpose of cheating?

Mr. Bird and Mrs. Jeannie Lim were emphatic that without P12 FNCB would certainly have not accepted the shares offered as security nor issue letters of credit and in our view the trial judge was right in finding this intention proved.

Arguments specifically advanced on behalf of the second appellant.

We now turn to the grounds of appeal specifically advanced on behalf of the second appellant.

Much of Mr. Joseph's argument was directed towards persuading the court that the second appellant had authority to do what he did — (1) he had authority in his capacity as a member of the Investment and Loan Committee and (2) also he had authority to do so alone, in his capacity as Managing Director in view of certain by-laws and the power given to him by his contract of service with the bank (P56).

By-law 5(i) of the bank states its primary objective as follows:

"(i) The primary object of the Bank is to raise the economic status of its members by granting loans at reasonable interest for the purposes of agriculture, production enterprise, marketing, industries, fisheries, transport, housing and also to encourage thrift and savings provided that if the loan is granted on the security of movable property prior permission shall first be obtained from the Registrar."

Paragraph (ii) of the same by-law says what the bank may do to attain that objective. Our attention was directed specifically to the following:

"(ii) To attain these objects, the bank shall carry out the following operations:—

(1) To carry on the business of a bank and money-lending.

(3) To borrow money and receive financial assistance from the Government or other sources.

(8) To buy, sell, own, lease, charge any property such as land, building, warehouse, vehicle and things considered necessary and reasonable for the use of the Bank or its members or the co-operative movement generally.

(9) To form any co-operative society *or other business organisation* with the object of acquiring all or any property, rights and liabilities of this bank or any other objects which may directly or indirectly benefit the Bank."

The words italicized in subpara. (9) were added in 1972, specifically to allow the bank to form subsidiary corporations other than co-operative societies.

Mr. Joseph submitted that under subpara. (9) the bank had power to form a business organisation "which may directly or indirectly benefit the bank", that in view of the expected profit that might be derived from promoting the fight the bank therefore had power to form Tinju Dunia, and that the loss actually suffered by the bank made no difference, as all business ventures are risky and as only loss suffered by wrongful means is wrongful loss, and here the loss was caused by lawful means.

Mr. Joseph further submitted that under subpara. (3), as the bank had power to borrow money, in principle it had implied and, under subpara. (8) of the by-law, express power to give security for money borrowed by it; that under by-law 42 the Board had the powers of management of the bank; that under by-law 55 the Board could appoint a Managing Director and specify his powers; that in this case, as the bank could borrow and give security, the Board had the same power as the bank; that as the Board had given that power to its Managing Director, the second appellant, by his contract of service P56, it therefore followed that the second appellant was fully authorised to pledge the shares with FNCB.

By-law 55 reads as follows:

"The Board may from time to time remove or appoint a Managing Director upon certain conditions such as the length of service, salary, powers, duties, allowances and other benefits as it thinks fit. It may from time to time amend the conditions concerning the appointment of the Managing Director provided that he may not be given the powers and duties which the Board itself possesses not."

The relevant clause of P56 which, it was submitted, gave the second appellant the necessary authority is clause 3 which reads:

"The Pengarah Urusan [Managing Director] shall exercise and carry out all such powers and duties and shall observe all such directions and restrictions as the Jemaah Pengarah [Board] may from time to time confer or impose upon him but in default thereof the Pengarah Urusan shall control the general management of the business of the Bank and shall have power to appoint promote and dismiss the officers, clerk and servants of the Bank (other than the Pengurus Besar, Timbalan Pengurus Besar, Penolong Pengurus Besar and Setia Usaha) and to enter into any trade contracts on behalf of the Bank in the ordinary way of business and to do all other acts and things which he may consider necessary or conducive to the interests of the Bank."

Mr. Joseph also argued that the transaction effected by P12 was a trade contract which the second appellant had power to enter into under clause 3.

Mr. Joseph also argued that the trial judge wrongly treated the transaction as a pledge and that he should have held that it was an equitable charge, and that under the already quoted by-laws and P56 the second appellant had power to enter into it.

Mr. Joseph also argued that even if Tinju Dunia was not a subsidiary of the bank, the bank had power nevertheless to enter into the transaction and under P56 its Managing Director, the second appellant, also had the same power.

In our judgment, as the bank had power under by-law 5(ii)(9) to form a business organisation which might directly or indirectly benefit the bank, it had power to form Tinju Dunia, which clearly was a business organisation. But the trial judge has found on the evidence that the formation of Tinju Dunia was never referred by any of the appellants to the bank nor to any of its subsidiaries, let alone approved by any of them, and so cannot be regarded as a subsidiary of the bank or of any of its subsidiaries. We agree with him: and so this argument in our view failed.

As to Mr. Joseph's argument that the bank, its Board and its Managing Director had power to pledge the shares, we agree they had power to do so, but in the words of by-law 5(ii)(8), only "if considered necessary and reasonable for the use of the bank or its members or the co-operative movement generally". But here the shares were pledged for the benefit not of the bank or its members, but for the benefit of an outside body which had no legal connection with the bank, and, further, we are of the opinion that promoting a fight on this scale was highly speculative and cannot be said to benefit the co-operative movement generally.

As to the argument that the pledging was a trade contract within clause 3 of P56, in our judgment it was of course a trade contract, but one of a most extraordinary kind outside the contemplation of P56 and one not to benefit the bank but an outside body.

As to the argument that it was an equitable charge, not a pledge, in our judgment, if it was and if the second appellant had power to make it, he had power to do so only for the bank, not for an outside body.

Mr. Joseph also mentioned estoppel. He said that the practice of the bank was to give the second appellant a free hand in the general management and conduct of the bank's affairs and relying on this FNCB had opened the letters of credit for the benefit of Tinju Dunia, that accordingly the bank is estopped from denying the authority of the second appellant in pledging the shares (and Mr. Joseph cited *Freeman & Lockyer* v. *Buckhurst Part Properties*[6]) that the contract entered into with FNCB was only voidable and it had not been avoided by FNCB. We do not think that estoppel helped at all. The fact that a corporation has allowed its managing director a free hand in the management of its affairs does not allow him to put his hand in the corporation's till contrary to the criminal law.

Mr. Joseph argued that, if the second appellant had no authority to enter into the transaction with FNCB, at the time he reasonably believed that he had authority, and reasonable belief was a defence.

and Mr. Joseph cited *Pramatha Nath* v. *The State*[7] in support. We do not think that that case helped, as there everything the accused did was above board whereas here it is quite clear from the second appellant's subsequent conduct that he did not have a reasonable belief that he had that power; he breathed not a word about the transaction to the bank's authorities other than to his fellow accused and a few subordinates though he had many opportunities of doing so, and it is quite clear that on 5th May and until his arrest he did not believe — let alone reasonably believe — that he had authority to do what he did.

Mr. Joseph argued that the second appellant's motive was to benefit the bank and that the trial judge failed to take into account the fact that honest motive can negative dishonesty. Mr. Joseph gave many instances showing that the second appellant was acting entirely in the bank's, not his, interest. In our view, the judge took all this into account and nevertheless came to the conclusion — with which we agree — that the second appellant had acted dishonestly.

Mr. Joseph argued that much inadmissible evidence against the second appellant was admitted and that this prejudiced the case against him. In our judgment the judge did not admit inadmissible evidence against the second appellant. In a case where the prosecution alleges dishonesty on the part of the accused and the accused alleges to the contrary, the prosecution is allowed fairly wide latitude if it is to be treated fairly.

Mr. Joseph also argued that evidence relevant to a charge against the second appellant that had been stood down was wrongly admitted by the judge. In our view that was permissible here, because that evidence was relevant not only to the charge stood down but also to the charges against the second appellant in this trial, since where evidence is relevant to two charges it may be admitted in evidence in relation to either charge though proceedings on the other charge have been stayed.

Mr. Joseph argued that evidence against the other appellants was taken by the judge as evidence against the second. In our view the judge considered the case against and for each appellant separately, and despite this came to the conclusion — with which we agree — that each appellant was guilty. It is true that when recapitulating the case against all the appellants the judge lumped together all the main points of evidence against all the appellants without separating them, but in view of what he had done previously we do not think that this was fatal.

Arguments on behalf of the third appellant

We now turn to the arguments advanced on behalf of the third appellant by Encik Kadir.

The judge was wrong, it was submitted, in holding that the subsequent conduct of this appellant showed dishonest intention on his part and that the appellant was aware of all the circumstances surrounding the pledging and that he had conspired and intentionally aided the second appellant in the pledging.

It was further submitted that the third appellant had no dishonest intention, that the judge failed to consider that this appellant took no part in the discussions regarding the big fight, nor in the formation and running of Tinju Dunia, that he was not a member of either the 1972 Committee or the 1975 Investment and Loan Committee, that P12 was not drawn up by him, that he signed it only as Secretary and that his signature was superfluous, and that he had no ulterior motive when signing it and that he made no profit from the transaction.

Finally it was submitted that the judge did not adequately consider the defence and that the conviction was against the weight of evidence.

In our judgment, the trial judge rightly considered that this appellant's conduct subsequent to the signing of P12 on 5th May, 1975, was relevant to the question whether or not he was guilty of forgery and of abetment of the offence of CBT committed by the second appellant; he rightly considered that the third appellant was fully aware of what he was doing on the 5th May and subsequently of what he had done that day.

In our judgment, the judge did consider all the things which it was said he had not and did more than adequately consider the defence.

In our judgment, in the light of the evidence taken as a whole the trial judge rightly convicted the third appellant of the two charges against him.

Criminal breach of trust

As regards the charge of CBT against the second appellant, this offence is defined by section 405 of the Penal Code as follows:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

Section 403 says in its explanation 1 that

"A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration

A finds a Government promissory note belonging to *Z* bearing a blank endorsement. *A*, knowing that the note belongs to *Z*, pledges it with a banker as a security for a loan, intending at a future time to restore it to *Z*. *A* has committed an offence under this section."

The learned trial judge considered, and we agree, that it was enough for the prosecution to prove that the second appellant had dishonestly misappropriated to his own use the shares entrusted to him or that he had dishonestly used them in violation of a direction of law prescribing the mode in which the trust was to be discharged, and also in violation of a legal contract of service which he had made touching the discharge of that trust.

It was not disputed that the shares had been entrusted by the bank to the second appellant and the learned judge found on the evidence that he had dishonestly misappropriated them, albeit with the intention of doing so but temporarily, and that despite this the second appellant was guilty because the shares

had been pledged without authority from the bank and to benefit an outside body, and we are of the opinion that in the circumstances the learned judge could not reasonably have come to any other finding.

Abetment

As regards abetment, the learned judge also found the first and third appellants guilty of abetment of the offence of CBT committed by the second appellant.

Section 107 of the Penal Code provides:

"A person abets the doing of a thing who —

First. — Instigates any person to do that thing: or,

Secondly. — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, or in order to the doing of that thing; or,

Thirdly. — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

The learned judge found that the acts of the first appellant fell within all three limbs of section 107, namely abetment by instigation, conspiracy and intentionally aiding, and that the acts of the third came under the second and third limbs. Here too in the light of the evidence regarding the conduct of the two appellants, in our opinion the learned judge's finding should not be disturbed.

Conclusion on convictions

In the result, we affirm the convictions of all three appellants.

We are familiar with the views of the UMNO Youth members who gave evidence in this case, some of whom, in the words of the trial judge, "evinced in favour of the first accused a partisan attitude and as militant a spirit as a battalion of commandos which they tried to but could ill conceal, and indeed one of them [Abdul Aziz bin Salehuddin], in an emotional outburst, declared that even this case was a political trial ..." and Abdul Kadir bin Haji Sheikh Fadzir, a lawyer who, according to two defence witnesses "had a clear and loud voice and ... normally asked the others to be quiet when he spoke as he liked everybody to listen to what he had to say". Some of their views might be good, but some were uninformed and a few were positively wild and must have embarrassed their party elders whom they were supposed to support. Fortunately, many of their views were simply ignored.

In this case the first appellant, instead of curbing their zeal, followed them in their enthusiastic support of a hare-brained scheme and in the result their immaturity and impetuosity have led to the ruination of two professional men and the political destruction of their leader.

And as to the allegation that this case was a political trial, Abdul Aziz Salehuddin and others like him seem to be of the opinion that party leaders who have strayed from the straight and narrow path should enjoy legal immunity, which if granted would be tantamount to an open invitation to our politicians to rob the rakyat and plunder the country rather than serve them. As to the Attorney-General's exercise of his discretion to charge these appellants, he would quite properly have lain himself open to a charge of a gross failure of his public duty if he had known of these facts and yet decided not to prosecute, since his duty under the constitution and the law is, regardless of the consequences to him personally and politically, to bring before the courts any person who has committed a serious breach of the law, and the most serious charge that may be levelled against the Attorney-General is that he prosecutes only members of the Opposition but at all costs protects members of his own political party.

The second appellant complained that evidence of some of his private business deals was wrongly admitted, and we have already said that it was rightly admitted, as dishonest intention on the part of the second appellant was very much in issue. It would appear, however, to us that if his contract of service had not by implication allowed him to carry on his own business outside working hours there might not have been any occasion to refer to his private business deals, and statutory bodies may be well advised to insist that their officers, like Government officers and officers in reputable companies and firms, should be banned from doing any business on the side, be it within or outside working hours.

On the case as a whole, the learned judge remarked: —

"The activities and workings of the bank unfolded to view ... have disclosed a deplorable, sordid and scandalous state of affairs and a blatant and outrageous disregard for [the law], with virtual carte blanche to the first and second [appellants] as chairman and managing director, not unaided by the apathy and acquiescence of the directors, including the Government watchdogs or official sentinels or whatever ...' and with even policy and other decisions of the Board and the Executive Committee not infrequently flouted and honoured by breach than compliance — all suggestive of and presenting a grotesque picture of passive connivance on the part of the directors in all these irregular and indeed unlawful activities and practices...."

These are strong words but in our view justified. It seems to us that the Ministry of Agriculture — which by definition is best fitted to deal with rubber, palm oil, and the like — is not equipped to supervise a bank even though it is a co-operative and that it may well be advisable to bring co-operative banks as all other banks within the jurisdiction of another government agency that specialises and works full time in vetting and monitoring banks.

Sentences

On the charge of forgery the third appellant was sentenced to one year and on the charge of abetting the CBT committed by the second appellant he was fined $15,000 or in default six months. The Public Prosecutor withdrew his appeal against these sentences meaning that they should not be increased but maintained that the sentences should stand. Encik Abdul Kadir for the third appellant on the other hand argued that the sentences should be reduced because his client was not an active participant and had not benefited from the transaction. We agree that his sentences should be reduced — as in the circumstances in view

of his position under the first and second appellants he had little choice but to go along with them. For the sentences imposed on him we substitute the following: on the first charge one day's imprisonment *and* either a fine of $10,000 or in default six months, and on the second charge a fine of $10,000 or in default six months. As the two offences were akin or intimately connected with each other, following the principle set out in *N.N. Burjorjee* v. *Emperor*,[8] we order that if the fines are not paid the sentences of imprisonment in default shall run concurrently.*

As regards the second appellant, he was sentenced to two years on the first charge of forgery and $25,000 or in default nine months on the charge of CBT. This appellant played a more important role than the third appellant. It was his expertise in accounting and in company law that made possible these crimes. The degree of his crimes is also more serious: as Managing Director he held a position of great trust and was employed and expected to look after the bank's property and affairs generally, and yet as a willing and able lieutenant, he showed the way to the first appellant. Had he dug in his heels, these crimes might not have been committed. In view of this we are of the opinion that the total period this appellant should serve in prison is three years, and because of the principle in the above-cited case we substitute for the sentences imposed on this appellant a sentence of three years on each charge, the sentences to run concurrently.

As regards the first appellant, he was sentenced to six months on the forgery charge and to a fine of $15,000 or in default six months on the abetment of CBT charge. We are of the opinion that he was the principal actor in this drama. But for him and for his support for the big fight, these crimes might not have been committed and his co-accused who looked up to him and were loyal to him might not have got into trouble. But now the latter have to endure the loss of professional and personal reputation, and in view of this and of the need for people in public life to show a good example to those below them and of the serious breach of trust placed in him by the members of the bank who were poor people from rural areas who have a right to expect their leaders not to touch a penny of money entrusted to his care, we are of the opinion that this appellant should serve a longer period in prison than the second and on the principle stated in *Burjorjee* we substitute for the sentences imposed by the trial judge a sentence of four years on the first charge and three years on the second charge, the sentences to run concurrently.

Appeals dismissed.

Solicitors: *Sri Ram, Chan & Chia; Datuk Rajasooria & Son; Kadir, Tan & Ramli.*

* When the third appellant appeared in the Federal Court on Tuesday, February 28, 1978, after having failed to obtain special leave to appeal from the Privy Council, the Lord President stated that when the judgment was delivered the court had overlooked section 283(b)(4) of the Criminal Procedure Code, and that as the intention of the court was and is that the third appellant should serve (i) one day and (ii), in the event of his failing to pay the fines of $20,000, a total of six, not twelve, months, the warrant of commitment will be so worded, if the third appellant failed to pay the fines. The latter chose to pay the fines. See [1978] 2 M.L.J. at p. cli.

AHMAT BIN GANI & ORS. v. SUPERINTENDENT OF LANDS AND SURVEYS, FIRST DIVISION

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat F.J. and Tan Chiaw Thong J.) January 20, 1978]

[Kuching — Federal Court Civil Appeal No. 180 of 1976]

Land Acquisition — Appeal against Collector's award — Functions of court — Onus on appellant to show that amount of compensation is inadequate — Difference in conditions of title — Sarawak Land Code (Cap. 81).

In this case the appellants appealed against awards made by the learned judge of the High Court sitting with two assessors in a land reference to the court. The learned trial judge having considered the topographs of each lot in the lands acquired and the other evidence and submissions of learned counsel, had increased the awards made by the Collector.

Held: (1) the appellants have not succeeded in showing that the learned judge's assessment was wrong. An appellate court ought not to reject the judge's assessment and embark upon a fresh valuation of its own unless it was satisfied for good reasons that the judge's assessment must be wrong;

(2) in this case the learned judge had not taken into account the difference in the conditions of title in respect of the lands acquired, in that some were held under agricultural titles and some under open titles. The awards should be adjusted by adding the sum of $100 per acre to the amounts awarded in respect of the lands held under open titles.

Cases referred to:-

(1) *Collector of Land Revenue* v. *Alagappa Chettiar* [1971] 1 M.L.J. 43.

(2) *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands and Surveys, First Division* [1968] 1 M.L.J. 293.

(3) *Kho Choon Tee* v. *Superintendent of Lands and Surveys, Third Division* [1972] 1 M.L.J. 265 at p. 268.

(4) *Mohani Mohan Banerji* v. *Secretary of State* A.I.R. 1921 Cal. 193.

(5) *Narsinghdas* v. *Secretary of State* A.I.R. 1925 P.C. 91.

(6) *Collector, Sconi* v. *Dadoo* A.I.R. 1969 M.P. 28.

(7) *In re Sorabji Jamsedji Tata* (1908), 10 Bom. L.R. 696.

(8) *Ataul Huq* v. *Secretary of State* (1910), 11 Cal. L.J. 393.

(9) *Vyricherla Narayana Gajapatiraju* v. *Revenue Divisional Officer, Vizagapatan* A.I.R. 1939 P.C. 98 at p. 103.

FEDERAL COURT.

Matthew Chan for the appellants.

Zaidi Khaldin Zainie for the respondent.

Tan Chiaw Thong J. (read by Lee Hun Hoe C.J. (Borneo)): This is an appeal against the awards made by the learned High Court Judge, Kuching, sitting with two assessors in a land reference to the court under the Land Code (Cap. 81).

The appellants were registered proprietors of 15 parcels of land which have been compulsorily acquired by the Government for the purpose of residential and town development. In the land reference the date for the determination of the amount of compensation i.e. the market value to be awarded for the 15 parcels of land (hereinafter called "the lands acquired") was the date of the publication of the *gazette* notification under section 47 of the Land Code. This *gazette* notification was published in the *Sarawak Government Gazette* of January 16, 1970 and therefore that is the date for the determination of the market value of the lands acquired.